STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JENNA KAY BANICKI, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ALANA DAWN BANICKI,

Respondent-Appellant,

and

PERRY FRAZIER,

Respondent.

UNPUBLISHED
March 1, 2007

No. 271470
Berrien Circuit Court
Family Division
LC No. 2006-000011-NA

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(m). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant argues that this Court should reject a strict interpretation of MCL 712A.19b(3)(m) as unreasonable. Because respondent-appellant failed to preserve this issue for appellate review by raising it before the trial court, our review is limited to plain error affecting her substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(m), which allows for termination where "[t]he parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state." The evidence clearly and convincingly supported termination under subsection (m). *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Unrebutted evidence, including respondent's own testimony, showed that her older children were removed from her care in 2001 because of parental neglect and, in April 2005, during the resultant protective proceedings in Illinois, she voluntarily released her parental rights to those children.

Respondent, however, asserts that the Legislature could not have intended for parental rights to be terminated under subsection (m) solely on the basis that a parent voluntarily terminated her rights to another child and without considering the parent's current situation, parental neglect, or whether she rectified her issues. We disagree. The Legislature is presumed to have intended the meaning it plainly expressed. *In re RFF,* 242 Mich App 188, 198; 617 NW2d 745 (2000). Subsection (m) is clear and unambiguous and plainly expresses the Legislature's intent that parental rights can be terminated where a parent has voluntarily released her rights to another child after the initiation of neglect proceedings in Michigan or another state. "[W]hen the statutory language is clear and unambiguous, judicial construction is neither required nor permitted." *Id.* Nothing in subsection (m), unlike in subsection (i), suggests that it is necessary for petitioner to establish either prior serious or chronic parental neglect or that a parent's prior attempts to rehabilitate have been unsuccessful. MCL 712A.19b(3)(i). Therefore, termination under subsection (m) based on respondent's prior terminations was proper.[1]

Respondent-appellant correctly notes that, because of her prior voluntary terminations, there was no possibility of her prevailing with regard to subsection (m). *In re AMAC,* 269 Mich App 533, 539; 711 NW2d 426 (2006). However, contrary to her argument, application of subsection (m) does not mean that any parent who previously voluntarily terminated their rights to another child automatically loses their parental rights to any subsequent children. Instead, the statutory scheme provides a parent an opportunity to persuade the court that termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re AMAC, supra* at 539. Here, respondent-appellant was provided that opportunity through her own testimony, witnesses' testimony, and several letters from service providers noting her progress. However, the evidence, considered in its entirety, failed to establish that termination of respondent-appellant's parental rights was clearly not in the child's best interests, MCL 712A.19(b)(5), especially given the testimony indicating that *immediate* stability and permanency was of paramount importance for the child's emotional and mental wellbeing. Although respondent-appellant's recent progress toward rehabilitation since her release from prison was commendable, she clearly could not provide the child with such stability or permanency as evidenced by her lengthy history of neglecting her children, her longstanding substance abuse problem, her lack of current employment and independent housing, and her previous, largely unsuccessful rehabilitative efforts. On this record, the trial court did not clearly err in finding that termination was in the

[1] We note that Michigan courts recognize the doctrine of anticipatory neglect ("[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re AH,* 245 Mich App 77, 84, 627 NW2d 33 (2001), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973); see also, *In re Dittrick*, 80 Mich App 219, 222; 263 NW2d 37 (1977). Here, there was an adjudication of neglect and abuse concerning respondent-appellant's older children. Further, the petition regarding the child at issue in this case was based on allegations of serious parental neglect and failure to protect the child from sexual abuse. Accordingly, the circumstances in this case sounded in abuse and neglect.

child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).[2] Therefore, no plain error occurred.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder

[2] The trial court went beyond the best interest inquiry under MCL 712A.19b(5). The statute does not require that the court affirmatively find that termination is in the child's best interests. *In re Trejo, supra* at 364 n 19.